

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 TARRELL MOSLEY,

4 Plaintiff,

5 vs.

6 C/O ANDERSON, *et al.*,

7 Defendants.

2:13-cv-01285-GMN-GWF

**ORDER**

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9 This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state  
10 prisoner. Neither a filing fee nor an application to proceed *in forma pauperis* was submitted with the  
11 complaint. On July 22, 2013, the court issued an order requiring plaintiff to file an *in forma*  
12 *pauperis* application within thirty days. (ECF No. 2). The thirty-day period has now expired, and  
13 plaintiff has not filed an *in forma pauperis* application or otherwise responded to the court's order.

14 District courts have the inherent power to control their dockets and “in the exercise of that  
15 power, they may impose sanctions including, where appropriate . . . dismissal of a case.” *Thompson*  
16 *v. Housing Auth.*, 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action, with prejudice,  
17 based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply  
18 with local rules. *See, e.g. Pagtalunan v. Galaza*, 291 P.3d 639, 643 (9<sup>th</sup> Cir. 2002) (dismissal of  
19 habeas corpus petition with prejudice for failure to prosecute action and failure to comply with a  
20 court order); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995) (dismissal for noncompliance with  
21 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to  
22 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41  
23 (9<sup>th</sup> Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court  
24 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for  
25 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986)  
26 (dismissal for failure to lack of prosecution and failure to comply with local rules).

1 In determining whether to dismiss an action for lack of prosecution, failure to obey a court  
2 order, or failure to comply with local rules, the court must consider several factors: (1) the public's  
3 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk  
4 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and  
5 (5) the availability of less drastic alternatives. *Pagtalunan*, 291 F.3d at 642; *Thompson*, 782 F.2d at  
6 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;  
7 *Ghazali*, 46 F.3d at 53.

8 In the instant case, the court finds that the first two factors, the public's interest in  
9 expeditiously resolving this litigation and the court's interest in managing the docket, weigh in favor  
10 of dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal,  
11 since a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
12 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9<sup>th</sup> Cir.  
13 1976). The fourth factor – public policy favoring disposition of cases on their merits – is greatly  
14 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a  
15 party that his failure to obey the court's order will result in dismissal satisfies the "consideration of  
16 alternatives" requirement. *Pagtalunan*, 291 F.3d at 643; *Ferdik v. Bonzelet*, 963 F.2d at 1262;  
17 *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. The court's order requiring plaintiff to file an  
18 *in forma pauperis* application within thirty days expressly stated: "Plaintiff's failure to file an  
19 application to proceed *in forma pauperis* in compliance with this order may result in the dismissal of  
20 his lawsuit without prejudice." (ECF No. 2, at pp. 1-2). Thus, plaintiff had adequate warning that  
21 dismissal would result from his noncompliance with the court's order.

22 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE**  
23 based on plaintiff's failure to file an *in forma pauperis* application in compliance with this court's  
24 order of July 22, 2013.

25 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

26 Dated this 10th day of October, 2013.

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Gloria M. Navarro  
United States District Judge